United States Department of Labor
Employees' Compensation Appeals Board

A.B., Appellant	)	
	)	
and	)	**Docket No. 17-1689**
	)	**Issued: December 4, 2018**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, Nogales, AZ, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 2, 2017 appellant filed a timely appeal from a February 21, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the February 21, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury on August 16, 2016 in the performance of duty, as alleged.

FACTUAL HISTORY

On August 17, 2016 appellant, then a 32-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on August 16, 2016 he fainted due to loss of consciousness and sustained an abrasion on the left side of his face as a result of hitting the floor while in the performance of duty. He did not stop work.

An authorization for examination and/or treatment (Form CA-16), was issued by the employing establishment on August 16, 2016, which authorized appellant to obtain medical treatment at Holy Cross Hospital in Tucson, Arizona. In a report dated August 16, 2016, Dr. Matthew Lopez, an attending emergency medicine physician, diagnosed atrial fibrillation and syncope. He released appellant to regular work effective August 19, 2016 and advised him to follow-up with his primary care provider and return to the hospital if his symptoms returned.

An emergency services report dated August 16, 2016 indicated that appellant had fainted and was found lying on the floor.

In a hospital report dated August 16, 2016, Sarah E. Everhart, a registered nurse, noted that appellant presented to the emergency department after a syncopal episode at work which had occurred at approximately 7:15 a.m. that day. Appellant had abrasions on the left side of his face and stated that he was sitting down when he felt bradycardic, lightheaded, and "blacked out."

On August 16, 2016 Dr. Melanie S. Kuhlman, an emergency medicine specialist, reviewed a chest x-ray and found no acute cardiopulmonary disease. The cardio mediastinal silhouette was unremarkable and the lungs were clear with no focal areas of consolidation, pleural effusion, or pulmonary edema.

In a September 6, 2016 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries. Appellant did not respond.

By decision dated October 7, 2016, OWCP accepted that the August 16, 2016 incident occurred as alleged, but denied appellant's claim, finding that he failed to submit evidence containing a medical diagnosis in connection with the injury or events. Thus, it concluded that he had not established fact of injury.

On October 28, 2016 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Appellant submitted an August 18, 2016 report from Dr. Rajen Desai, a Board-certified cardiologist, who diagnosed vasovagal attack and paroxysmal atrial fibrillation. Dr. Desai indicated that appellant presented for follow-up after he was seen in the Holy Cross Hospital for an episode of syncope. Appellant stated that he was talking to coworkers, started to get

lightheaded, felt like everything was "closing in," and then fell face first to the ground and this resulted in an abrasion. Dr. Desai noted that appellant was taken to Holy Cross Hospital where his workup was essentially negative.

On August 18, 2016 Dr. Katie Grund, a Board-certified family practitioner, diagnosed syncopal episodes, acute stress reaction, and low back pain. She noted that appellant was reportedly trying to stop a human trafficker while at work when he was injured. The assailant was in a car and appellant was on foot in front of the car when the assailant tried to escape and drove towards appellant. Appellant jumped to get out of the way and slipped on loose gravel and ended up falling on his right low back and buttocks area. He related that he was able to get up right after the injury and took two days off of work. Appellant then reported that he passed out the following day at work. He stated that he was standing and talking to coworkers and then started to feel hot and fuzzy-headed and then developed tunnel vision. Appellant sat down and then slumped forward, striking his head on the floor. He stated that he hit his head and was unconscious for approximately 30 to 60 seconds. Dr. Grund indicated that appellant had an abrasion on his face from hitting the floor over the left eye/temple area. She noted that appellant's cardiologist agreed with the diagnosis of vasovagal episode and cleared him back to work from a cardiac standpoint. Dr. Grund also released appellant to return to work that day.

In an October 26, 2016 report, Dr. Desai noted that appellant was evaluated on August 18, 2016 after he had a syncopal episode at work, which resulted in a fall and an abrasion. He opined that appellant's diagnosis of vasovagal syncope was "likely as a result of a traumatic experience he suffered prior to the episode" and "was not caused by a preexisting condition or a medication interaction."

On October 26, 2016 Dr. Grund noted that she saw appellant on August 18, 2016 for a follow-up from a syncopal episode that occurred while he was at work on August 16, 2016. She reiterated that he passed out from a seated position for approximately 30 to 60 seconds. Dr. Grund noted that appellant was taken to Holy Cross Hospital and his heart rate was initially low and in a normal rhythm, but then due to the stress of the event his paroxysmal atrial fibrillation started. Appellant took his as-needed medication and the abnormal rhythm stopped immediately. Dr. Grund opined that appellant's syncopal episode was not related to his atrial fibrillation. She further opined that it was caused by vasovagal syncope, which was common and typically benign, and could be bought on by dehydration, exhaustion, stress reaction like seeing blood or phobias, head or cold exposure, or standing for long periods of time. Dr. Grund noted that appellant had classic symptoms of vasovagal syncope, including tunnel vision, sensation of heat, and nausea prior to passing out. Additionally, there was no witnessed seizure activity and when he came out of the episode, appellant was not confused. Dr. Grund concluded that his vitals, including low blood pressure and low heartbeat, were all conclusive of the diagnosis of vasovagal syncope.

By decision dated February 21, 2017, an OWCP hearing representative conducted a review of the written record and affirmed, as modified, the prior decision finding that appellant had submitted evidence containing a medical diagnosis in connection with the injury or events, but had failed to submit sufficient factual evidence to establish that the injury and/or events occurred in the performance of duty, as alleged, on August 16, 2016.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[3] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

It is a well-settled principle of workers' compensation law, and the Board has so held, that an injury resulting from an idiopathic fall -- where a personal, nonoccupational pathology causes an employee to collapse and to suffer injury upon striking the immediate supporting surface, and there is no intervention or contribution by any hazard or special condition of employment -- is not within coverage of FECA.[5] Such an injury does not arise out of a risk connected with the employment and is, therefore, not compensable. However, as the Board has made equally clear, the fact that the cause of a particular fall cannot be ascertained or that the reason it occurred cannot be explained, does not establish that it was due to an idiopathic condition.[6]

This follows from the general rule that an injury occurring while in the performance of duty is compensable unless the injury is established to be within an exception to such general rule.[7] OWCP has the burden of proof to submit medical evidence showing the existence of a personal, nonoccupational pathology if it chooses to make a finding that a given fall is idiopathic in nature.[8] If the record does not establish that the particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, one which is distinguishable from a fall in which it is definitely proved that a physical condition preexisted and caused the fall.[9]

ANALYSIS

The Board finds that this case is not in posture for decision.

On his claim form, appellant alleged that he was injured as a result of falling and hitting the floor on August 16, 2016 after he lost consciousness while in the performance of duty. As

[3] *Steven S. Saleh*, 55 ECAB 169 (2003).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Carol A. Lyles*, 57 ECAB (2005).

[6] *M.M.*, Docket No. 08-1510 (issued November 25, 2008).

[7] *Dora Ward*, 43 ECAB 767 (1992).

[8] *P.P.*, Docket No. 15-0522 (issued June 1, 2016); *see also Jennifer Atkerson*, 55 ECAB 317 (2004).

[9] *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988).

previously noted, OWCP bears the burden of proof to establish an idiopathic fall.[10] In *L.J.*,[11] the Board found that OWCP failed to prove that a fall was idiopathic in nature because the medical evidence failed to establish that the employee's fall was solely the result of a nonoccupational orthostatic hypotension condition. The Board determined that the medical evidence of record demonstrated that the claimant's employment activities of bending over and stooping down, at least partially, contributed to her falling at work.

Similarly, in this case, the Board finds that the medical evidence of record fails to show that appellant's fall was solely the result of a personal, nonoccupational pathology. Various medical records, including Dr. Desai's August 18 and October 26, 2016 reports and Dr. Grund's August 18 and October 26, 2016 reports, describe how appellant was reportedly trying to stop a human trafficker while at work when he slipped on loose gravel and fell down. Appellant took two days off of work and then reported that he "passed out the following day at work." He was standing and talking to coworkers when he started to feel hot and fuzzy-headed and developed tunnel vision. Appellant sat down, slumped forward, and then hit his head on the floor and was out for about 30 to 60 seconds. None of the physicians opined that the incident resulted from a preexisting condition. The mere fact that an employee has a preexisting medical condition, without supporting medical rationale to establish that it was the cause of the employment incident, is insufficient to establish that a fall is idiopathic.[12] The medical evidence of record demonstrates that appellant was standing at work and sat down after he got tunnel vision when the fall occurred. Therefore, while the reports are insufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference that employment factors contributed to the work incident on August 16, 2016.[13]

Moreover, the Board notes that the factual evidence also supported that employment conditions contributed to appellant's fall at work. An emergency services report dated August 16, 2016 indicated that appellant had fainted and was found lying on the floor and a hospital report dated August 16, 2016 stated that appellant presented to the emergency department after a syncopal episode at work which had occurred at approximately 7:15 a.m. that day. Appellant had abrasions on the left side of his face and stated that he was sitting down when he felt bradycardic, lightheaded, and "blacked out." Accordingly, the record does support that conditions of employment did contribute, at least partially, to appellant's alleged fall on August 16, 2016.[14]

If the record does not establish that a particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, one which is distinguishable from a fall in which it is definitely proved that a physical condition was preexisting and caused the fall.[15] The Board finds that OWCP has failed to meet its burden to establish that appellant's seated fall onto his face

[10] *See supra* notes 6-8.

[11] Docket No. 08-1415 (issued December 22, 2008).

[12] *See supra* note 3.

[13] *See E.C.*, Docket No. 16-1334 (issued February 8, 2017).

[14] *Id.*

[15] *Id.*

at work was of an idiopathic nature with no contribution or intervention from employment factors.[16] The evidence of record is sufficient to require OWCP to further develop the medical evidence and the case record.[17]

Accordingly, the case will be remanded for OWCP to determine whether appellant sustained an injury causally related to the August 16, 2016 employment incident, and if so, to also determine the nature and extent of disability, if any.[18]

CONCLUSION

The Board finds that this case is not in posture for decision.

[16] *R.D.*, Docket No. 13-1854 (issued December 23, 2014).

[17] *See Robert A. Redmond*, 40 ECAB 796, 801 (1989).

[18] The record contains a Form CA-16 signed by the employing establishment official on July 10, 2017. When the employing establishment properly executes a CA-16 form which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a CA-16 form is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2017 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part and the case is remanded to OWCP for further action consistent with this decision of the Board.

Issued: December 4, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board